

**NORTH CAROLINA COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL
DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Rules Committee Minutes

Clarion Hotel State Capital
320 Hillsborough Street
Raleigh, NC 27603

Thursday, April 26, 2012

Attending:

Rules Committee Members: Jennifer Brobst, Dr. Richard Brunstetter, Anna R. Cunningham, Debra Dihoff, Frank Edwards, Dr. James W. Finch, R. Michael Grannis, Dr. Marian S. Spencer, Don Trobaugh, David R. Turpin

Excused Absence: Pamela Poteat, Kevin P. Oliver

Other Absences: Matthew Harbin, F. Michael Maybee

Commission Members In Attendance: Dr. Greg Olley, Carol C. Vale, Dr. John S. Carbone

Division Staff: Steven E. Hairston, W. Denise Baker, Amanda J. Reeder, Marta Hester, Andrea Borden

Others: Betty Gardner, Terri Catlett, Joe Prater, Stephanie Alexander, Corye Dunn, Susan Pollitt, Elizabeth Albiston, Tara Fields, Ann Rodriguez, Alice Inman

Call to Order:

Jennifer Brobst, Chair, called the meeting to order at 9:40 a.m. All members of the Rules Committee, staff and public were introduced. Ms. Brobst read the Ethics Reminder and asked if any members had a conflict or appearance of conflict with respect to any matters coming before the Rules Committee. There were none.

Old Business:

Ms. Brobst asked the members if they had any business they wanted to bring to the Committee's attention. Debra Dihoff, Committee member, stated that she participated in a workgroup comprised of Division staff and stakeholders to rewrite the Basic Law Enforcement Training guidelines; the revisions will become effective statewide July 1, 2012. Ms. Dihoff stated that Committee members could review the curriculum if they wished to do so, and stated the training should last eight hours.

Ms. Brobst directed the Committee members' attention to the handout containing the 2012 Federal Poverty Guidelines, and informed the Committee members they could refer to that document when reviewing rules that required copayments determined by the poverty guidelines.

Ms. Brobst further directed the Committee members' attention to the Rulemaking Timeline Guide, stating that it would be helpful for them to get an understanding of the rulemaking process and the status of the rules in process. Ms. Brobst stated that updated timeline guides will be provided to members periodically by staff.

Ms. Brobst asked staff if information on rules that were in the public comment period was available to the public. W. Denise Baker, Team Leader, Division Affairs, reminded the Committee members that all proposed Commission rules in the public comment period are located on the Commission's website. Anna R. Cunningham, Committee member, asked if the public could be given information on how the

rulemaking process works. Ms. Baker responded that perhaps the Division's Advocacy and Customer Service Section could present information to the State Consumer and Family Advisory Committee (CFAC). Dr. James Finch, Committee member, asked if all public comments received on a proposed rule while in the public comment period would be shared with Committee members. Ms. Brobst responded in the affirmative.

Approval of Minutes:

Upon motion, second, and unanimous vote, the Rules Committee approved the minutes of the January 26, 2012 Rules Committee Meeting.

New Business:

Ms. Brobst informed the Committee that the Commission leadership is meeting periodically with Division leadership. Ms. Brobst stated that the Commission leadership is comprised of Dr. Greg Olley, Commission Chair, Frank Edwards, Chair of the Advisory Committee, and herself. Ms. Brobst reported that at the last leadership meeting held in early April, the leadership discussed several issues, including housing and services for the Latino population. Dr. Olley stated that in the spirit of transparency, the leadership team wished to inform the Commission members that these meetings were occurring. Dr. Richard Brunstetter, Committee member, asked if the meetings were regularly scheduled. Dr. Olley stated they were. Ms. Brobst added that these meetings were an opportunity to ensure that the Commission hears from the Division regarding pending or upcoming issues. She encouraged the Committee members to email her with any input they might have.

Ms. Brobst reminded the Committee that the General Assembly will reconvene on May 16, 2012. In addition, the Commission will meet May 24, 2012 and the next Rules Committee meeting will occur July 26, 2012. Ms. Brobst stated that the next Rules Committee meeting will be a training session on rulemaking; therefore, the Committee would not meet again in a voting capacity until its October meeting.

Steven Hairston, Chief, Operations Support Section, stated that at the leadership meeting, it was agreed that the Division would electronically distribute its legislative tracking sheet to the Commission members. Mr. Hairston stated that the document is updated weekly.

Proposal for Three Ad Hoc Subcommittees:

Ms. Brobst proposed that the Rules Committee create ad hoc subcommittees to review complex questions for the Committee to consider. She gave an example of a group working to define "evidence based practice". Ms. Brobst proposed creating four small subcommittees. Each subcommittee would focus upon a topic, including mental health, developmental disabilities, substance abuse populations, and a "catch all" group.

The Rules Committee had the following discussion regarding this proposal:

- Dr. Finch asked if the committees would be standing committees.
 - Ms. Brobst stated they would be and could be called upon as needed.
- Dr. Finch voiced his concern that the subcommittees would need to be very task focused and time limited.
 - Ms. Brobst agreed, stating that each subcommittee would need a chairperson and that the committees would correspond via email.

Upon motion, second and unanimous vote, the Rules Committee agreed to establish three discipline specific subcommittees and one "catch all" subcommittee.

Ms. Brobst stated she would pass around a sheet to ask committee members to choose their subcommittee of interest before leaving the meeting. She also encouraged the members to think about volunteering to serve as chairs of the subcommittees.

Existing Rule Review and Proposed Amendments:

Ms. Brobst drew the members' attention to the rules and statutes contained within in the packet. Ms. Brobst stated that the members should stay focused on the Commission rules, paying particular attention to its statutory authority.

Access to Services – The Latino Population:

Regarding services for the Latino population, Ms. Brobst stated that it important to identify needs and barriers for this populace. Ms. Brobst opined the Commission could pass rules relating to the training of mental health, developmental disability and substance abuse services staff to ensure they receive culturally based training. Ms. Brobst stated that other states, including Tennessee, have worked to add a discussion of culture and diversity to its staff training.

Prison Rules Fiscal Note Discussion:

Ms. Brobst reminded the Committee members that the Commission has been working to revise Rules 10A NCAC Subchapter 26D, "North Carolina Department of Correction: Standards for Mental Health and Mental Retardation" for several years. Ms. Brobst reminded the Committee that following approval of the rules, the Commission sent the rules to the Department of Correction, now the Department of Public Safety (DPS), in spring 2010 to prepare the fiscal note for the rules. Ms. Brobst stated that the DPS had completed the note and anticipates that this set of rules would cost nearly \$9 million to implement as written. Therefore, this set of rules creates a "substantial economic impact" as defined by N.C.G.S. §150B-21.4(b1), and the Commission is required by law [N.C.G.S. 150B-19.1(f)] to consider at least two alternatives to the proposed rules.

Ms. Brobst reminded the Committee members that these rules would govern the provision of mental health and mental retardation services in the prison system. Ms. Brobst stated that Dr. John Carbone, Chief of Mental Health Services at the Division of Prisons and a Commission member, as well as several members of the Department of Public Safety, were present to discuss the fiscal note.

Ms. Brobst stated that the Committee would focus on individual rules with a projected fiscal impact of over \$500,000.00 per year and not discuss the other rules. Ms. Brobst reminded the Committee that this discussion would focus upon the review of the fiscal note and not a review of the content of the rules themselves.

Joe Prater, the Assistant Director, Administrative Services, Division of Adult Correction, DPS, introduced himself to the Committee and stated that he is a "numbers guy" who manages the budget and personnel. Mr. Prater stated that the Department has a one billion dollar operating budget. Mr. Prater stated that he does not have expertise in the provision of mental health and mental retardation services within the prison system, and stated that several people employed by the system worked together in a team effort to produce the fiscal note before the Committee members for their review. Mr. Prater stated that whenever he works with administrative rules, he works to ensure that the numbers projected in the note are accurate.

Mr. Prater referred the Committee members to the fiscal note prepared by the DPS, and pointed to the summary pages at the end of the note. Mr. Prater stated this would be a method for the members to quickly note which rules are anticipated to create any fiscal impact. Mr. Prater stated that those rules that did not have numbers were expected to create no fiscal impact.

Mr. Prater reviewed the following rules with the Rules Committee:

Rule 10A NCAC 26D .0501, "Quality Improvement" – Mr. Prater stated that this rule is anticipated to cost \$239,972 the first year and \$227,722 every year thereafter. Mr. Prater explained that the figures

included two components: developing a new database and hiring two nurses. Mr. Prater stated the database would be necessary to document the tracking of events required by the rule. Mr. Prater stated that DPS called upon its Information Technology (IT) employees to evaluate other types of operations used for this type of database system. IT staff informed him that it would cost \$48,000, based upon the system already in place and used by the facilities. Mr. Prater stated that the two positions would be needed to maintain the database by making sure the information was timely entered, analyzed adequately, and used as intended. Mr. Prater stated that another position would be needed to help staff with current operations in mental health quality assurance. Mr. Prater also stated that the projected salaries are based upon whether the individual is classified as contributing, journey, or advanced level professional nurses, and those salaries are established by the Office of State Personnel. Mr. Prater continued by stating that the salaries in the fiscal note were established by using current benefit rates that are in place and approved by the state.

The Rules Committee was not required to take any action.

Rule 10A NCAC 26D .0704, "Confidentiality of Client Health Record" – Mr. Prater informed the Committee that DPS expected this rule to cost \$3,500 the first year and \$525 as a recurring expense. Mr. Prater stated that the cost associated with this rule includes the installation and maintenance of an encryption system to ensure confidentiality of any correspondence sent via email between facilities that are affected by the rule.

The Rules Committee was not required to take any action.

Rule 10A NCAC 26D .0803, "Screening" – Mr. Prater stated that DPS anticipates that this rule will cost \$1,811,201 every year. He stated that the cost associated with this rule comes from salaries and the associated cost of creating 25 professional nurse positions for purposes of conducting the evaluations required by the rule.

Betty Gardner, Quality Assurance Coordinator - Mental Health Services, DPS, stated that facilities currently perform the screenings that will be required by the rule. However, in doing so, the facilities use Licensed Practical Nurses (LPN) and Registered Nurses (RN) for the screenings. The proposed rule language will require the DPS to only use RNs for the process. Ms. Gardner stated that if the facilities were allowed to continue to use either RNs or LPNs to do the screening, then the proposed amendment would not create any additional cost to the DPS.

Terri Catlett, Deputy Director, Health Services, Division of Adult Correction, stated that the Department's data through 2010 indicated there were 40 to 45,000 new inmates admitted annually to the prison system. The new rule would require that each of these inmates be screened. Ms. Catlett added that the system has seven processing centers that accept the new inmates. If RNs are required to complete the screening, then 25 RNs would be hired to staff those seven centers.

The Rules Committee considered the following alternatives for the rule:

1. Altering the language on line 233 of the fiscal note to read "*the screening is performed by a nurse or other licensed clinician on all inmates*".
2. Altering the language on line 233 of the fiscal note to read "*the screening is performed by a nurse*".
3. Strike all proposed amendments to the rule and keep the rule language as it currently stated in the NC Code, as promulgated in 1994.

Upon motion, second, and unanimous vote, the Rules Committee approved the first alternative to forward to the full Commission for approval for submission to the Office of State Budget Management.

Rule 10A NCAC 26D .0904, “Treatment or Habilitation Plan” – Mr. Prater stated that DPS anticipates the proposed amendments will generate expenditures of \$4,325,267 the first year and create \$4,121,267 in annual expenses thereafter. Mr. Prater stated that the new language creates a requirement that a team of individuals, some of whom are not employees of DPS, be onsite for the frequent treatment or habilitation plan meetings for all inmates. Mr. Prater stated that the major cost involved with this Rule was covering the logistics of those individuals entering and exiting the prison facility. Mr. Prater stated that the Department is implementing a much stricter entrance and exit policy affecting everyone who goes in and out of the facility. Mr. Prater further stated that the prison has had substantial reduction in both administrative staff and correctional officers over the last two years. Mr. Prater stated that half of the anticipated cost associated with this rule comes from the need for the Department to hire staff to coordinate the logistics of the meetings.

Mr. Prater added that as DPS would be required by the rule to invite providers and LME staff to the planning meeting, the Department anticipated it would be required to pay providers for participating in the meetings. Ms. Prater stated it determined the rate of provider reimbursement by reviewing the rates paid by LMEs to providers. In that way, DPS anticipates a contract rate of \$80 per evaluation with providers. Mr. Prater added that there are between 26,000 and 27,000 meetings annually that would be affected by the proposed amendment.

The Rules Committee considered the following alternatives for the rule:

1. Add a subsection (f) to the rule that reads *“participation in the treatment planning team for those not already onsite does not require onsite availability, but does require a mode of communication that permits active participation.”*
2. To amend subsection (d) of the rule to read *“The plan shall be reviewed at least annually and more frequently when clinically or medically indicated, or at the time of discharge.”*
3. Add subsection (f) to the rule to read *“participation in the treatment planning team for those not already onsite does not require onsite availability, but does require a mode of communication that permits active participation.”* In addition, add language to subsection (d) that reads *“The plan shall be reviewed at least annually and more frequently when clinically or medically indicated, including a treatment planning session within days prior to discharge”*.

Upon motion, second, and unanimous vote, the Rules Committee approved the third alternative to be forwarded to the full Commission for approval for submission to the Office of State Budget Management.

Rule 10A NCAC 26D .1202, “Use of Seclusion” – Mr. Prater stated that DPS anticipates the proposed amendments to the rule will cost \$2,194,872 annually. Mr. Prater stated that the proposed amendment to this Rule would require the creation of 30 positions at three different facilities to provide coverage for seclusion as recommended in the Rule change. Mr. Prater added that it was important for the Committee members to note that the fiscal analysis for Rule 10A NCAC 26D .1203, “Use of Restraints”, incorporated the cost of staffing required by this rule. Therefore, if the costs of this rule were changed, it would affect the fiscal analysis for 10A NCAC 26D .1203. Regarding Rule 10A NCAC 26D .1203, Mr. Prater stated that the DPS anticipates an additional expense of \$310,000 the first year and \$46,500 as a recurring expense for additional cameras.

The Rules Committee considered the following alternatives for the rule:

1. In (h)(2), strike through the word *“Registered”*, so that either a LPN or a RN can conduct the assessments.
2. Strike all proposed amendments to the rule and keep the rule language as it currently stated in the NC Code, as promulgated in 1994.

Upon motion, second, and unanimous vote, the Rules Committee voted to reject both alternatives and keep the rule as currently amended and forward to the full Commission for approval for submission to the Office of State Budget Management.

Public Comment:

There were none.

There being no further business, the meeting adjourned at 12:59pm.